

1 MATTHEW D. POWERS (S.B. #212682)
mpowers@omm.com
2 ADAM P. KOHSWEENEY (S.B. #229983)
akohsweeney@omm.com
3 MALLORY A. JENSEN (S.B. #309187)
mjensen@omm.com
4 O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
5 San Francisco, CA 94111-3823
Telephone: (415) 984-8700
6 Facsimile: (415) 984-8701

7 JEFFREY A. BARKER (S.B. #166327)
jbarker@omm.com
8 O'MELVENY & MYERS LLP
610 Newport Center Drive, 17th Floor
9 Newport Beach, CA 92660-6429
Telephone: (949) 823-6900
10 Facsimile: (949) 823-6994

11 Attorneys for Defendants
BROOKDALE SENIOR LIVING INC. AND
12 BROOKDALE SENIOR LIVING COMMUNITIES, INC.

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

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1 STACIA STINER; HELEN CARLSON,
2 by and through her Guardian Ad Litem,
3 JOAN CARLSON; LAWRENCE
4 QUINLAN, by and through his Guardian
5 Ad Litem, LORESIA VALLETTE;
6 EDWARD BORIS, by and through his
7 Guardian Ad Litem, MICHELE LYTLE;
8 RALPH SCHMIDT, by and through his
Guardian Ad Litem, HEATHER FISHER;
PATRICIA LINDSTROM, as successor-in-interest to the Estate of ARTHUR
LINDSTROM; and BERNIE
JESTRABEK-HART; on their own
behaves and on behalf of others similarly
situated,

Plaintiffs,

v.

BROOKDALE SENIOR LIVING INC.;
BROOKDALE SENIOR LIVING
COMMUNITIES, INC.; and DOES 1
through 100,

Defendants.

Case No. 17-cv-03962-HSG

**STIPULATION AND ORDER
SETTING BRIEFING SCHEDULE
FOR REQUEST FOR
CERTIFICATION FOR APPEAL**

STIPULATION

WHEREAS, on January 25, 2019, the Court denied Defendants' Motion to Dismiss with regard to the allegations and claims in the Second Amended Complaint based on the Americans with Disabilities Act, ("ADA");

WHEREAS, Defendants believe that no court has addressed whether the ADA applies to the type of residential housing provided by Brookdale's assisted living communities, and that substantial ground for difference of opinion exists with respect to whether the ADA applies to;

WHEREAS, Defendants believe that resolution of the applicability of the ADA to the allegations and claims being asserted in this litigation will have a significant impact on discovery, class certification, and other issues;

WHEREAS, Defendants disclosed their intent to request certification from this Court for an appeal of this narrow issue under 28 U.S.C. § 1292(b) in the parties' February 5, 2019 Joint Case Management Conference Statement (Dkt. No. 87);

WHEREAS, on February 12, 2019, the Court directed the parties to meet and confer and file a stipulation and proposed order regarding a briefing schedule for Defendants' request for certification for appeal (Dkt. No. 89), to consist solely of a Motion by Defendants and an Opposition by Plaintiffs;

WHEREAS, Plaintiffs dispute Defendants' contention that the foregoing issue satisfies the applicable legal standard for certification for appeal set forth in 28 U.S.C. § 1292(b) and applicable precedent;

8 WHEREAS, the parties have met and conferred and have agreed upon a briefing schedule;

10 NOW, THEREFORE, IT IS HEREBY STIPULATED, pursuant to the Court's February
11 12, 2019 Order (Dkt. No. 89), that:

- 12 (1) Defendants will file and serve their Motion to Certify for Interlocutory Appeal and
13 Motion to Stay by Tuesday, February 26, 2019;
14 (2) Plaintiffs will file and serve its Opposition, if any, within three weeks thereafter,
15 by Tuesday, March 19, 2019.

17 Dated: February 25, 2019

MATT POWERS
JEFFREY A. BARKER
ADAM P. KOHSEWEENEY
MALLORY JENSEN
O'MELVENY & MYERS LLP

By: /s/ Jeffrey A. Barker

Attorneys for Defendants
BROOKDALE SENIOR LIVING INC.
BROOKDALE SENIOR LIVING
COMMUNITIES, INC.

1
2 GUY B. WALLACE
3 SCHNEIDER WALLACE COTTRELL
4 KONECKY WOTKYNS LLP
5

6
7 GAY CROSTHWAIT GRUNFELD
8 ROSEN BIEN GALVAN & GRUNFELD LLP
9

10 KATHRYN A. STEBNER
11 STEBNER AND ASSOCIATES
12

13 By: /s/ Guy B. Wallace
14

15 2000 Powell Street, Suite 1400
16 Emeryville, California 94608
17 Telephone: (415) 421-7100
18 Facsimile: (415) 421-7105
19

20 Attorneys for Plaintiffs and the Proposed
21 Classes
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2 **ATTESTATION PER LOCAL RULE 5-1(i)(3)**

3 The e-filing attorney hereby attests that concurrence in the filing of the document has been
4 obtained from each of the other signatories indicated by a conformed signature (/s/) within this e-
5 filed document.

6 Dated: February 25, 2019

7 MATT POWERS
8 JEFFREY A. BARKER
9 ADAM P. KOHSEENY
10 MALLORY JENSEN
11 O'MELVENY & MYERS LLP

12 By: */s/ Jeffrey A. Barker* _____

13 Attorneys for Defendants
14 BROOKDALE SENIOR LIVING INC.
15 BROOKDALE SENIOR LIVING
16 COMMUNITIES, INC.

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on February 25, 2019, I electronically filed the foregoing document
19 with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of
20 electronic filing to all CM/ECF participants.

21 Dated: February 25, 2019

22 MATT POWERS
23 JEFFREY A. BARKER
24 ADAM P. KOHSEENY
25 MALLORY JENSEN
26 O'MELVENY & MYERS LLP

27 By: */s/ Jeffrey A. Barker* _____

28 Attorneys for Defendants
29 BROOKDALE SENIOR LIVING INC.
30 BROOKDALE SENIOR LIVING
31 COMMUNITIES, INC.

ORDER

The Court, having considered the above Stipulation of Plaintiffs and Defendants and good cause appearing therefor, hereby orders as follows:

- (1) Defendants shall file and serve their Motion to Certify for Interlocutory Appeal and Motion to Stay by Tuesday, February 26, 2019;
 - (2) Plaintiffs shall file and serve its Opposition, if any, within three weeks thereafter, by Tuesday, March 19, 2019.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: February 26, 2019

Honorable Haywood S. Gilliam, Jr.
UNITED STATES DISTRICT JUDGE